

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN PADILLA,

Plaintiff,

-vs-

Case No: 1:07-cv-03638-PKL

MAERSK LINE, LTD.,

Defendant.

\_\_\_\_\_/

STATE OF MICHIGAN     )  
                                      )SS  
COUNTY OF OAKLAND    )

**AFFIDAVIT OF DENNIS M. O'BRYAN**

John Padilla, being duly sworn, deposes and says as follows:

1.     On March 9, 2007, March 28, 2007, and March 30, 2007, I wrote Maersk Line, Ltd. and/or Ms. Carol Burger, the attached letters.

2.     In spite of the request for overtime contained therein, it was never paid.

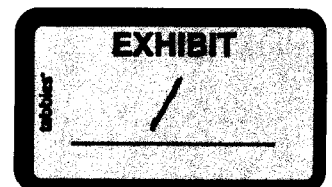
Further Affiant saith not.

  
Dennis M. O'Bryan

Subscribed and sworn to before me  
this 13<sup>th</sup> day of May, 2008.



MICHELE DENISE WOOD  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires Apr. 05, 2013  
Acting in the County of \_\_\_\_\_



**DENNIS M. O'BRYAN**



March 9, 2007

Maersk Line, Ltd.  
Giralda Farms  
P.O. Box 884  
Madison, NJ 07940

**Re: John Padilla**

To Whom This May Concern:

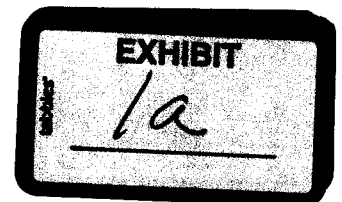
The undersigned represents John Padilla with regard to injuries sustained on or about November 4, 2006 whereafter he lost work for an appreciable period of time because of the hernia sustained. Although he was paid a portion of the unearned wages to which he was entitled, it was not at the rate that went into effect on 7/1/06, \$3,051.76, and, he was not paid his overtime. Demand is heretofore made for said deficiencies voluntarily to be provided this writer at your earliest convenience for provision to Mr. Padilla.

Very truly yours,

Dennis M. O'Bryan

DMO/mdw

O'Bryan Law Center, P.C.  
401 S. Old Woodward, Suite 320, Birmingham, MI 48009  
(O) 248-258-6262 • (E) dob@obryanlaw.net • (F) 248-258-6047  
Client Line • 1-800-OBRYANS



DENNIS M. O'BRYAN



March 28, 2007

VIA FAX

Maersk Line, Ltd.  
One Commercial Place  
20<sup>th</sup> Floor  
Norfolk, VA 23510

Attn: Carol Burger

Re: **John Padilla**  
**SS No: 052-36-6177**

Dear Ms. Burger:

Overtime pay owing to Mr. Padilla calculates approximately as follows:

11/7 - 11/30	136 hours
12/1 - 12/31	181 hours
1/1 - 1/31	173 hours
2/1 - 2/26	150 hours

**TOTAL                      640 hours @ \$21.06 = \$13,478.40**

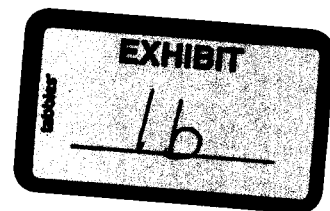
He is set to be evicted next week. Even partial payment at this time would be greatly appreciated.

Very truly yours,

Dennis M. O'Bryan

DMO/mdw

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DENNIS M. O'BRYAN



March 30, 2007

VIA FAX

Maersk Line, Ltd.  
One Commercial Place  
20<sup>th</sup> Floor  
Norfolk, VA 23510

Attn: Carol Burger

**Re: John Padilla**  
**SS No: 052-36-6177**

Dear Ms. Burger:

Pursuant to your request, attached please find a copy of the Lamont v United States, 613 F.Supp. 588 (S.D. N.Y. 1985) case which, like many others that have addressed the issue, holds that overtime wages are payable as unearned wages.

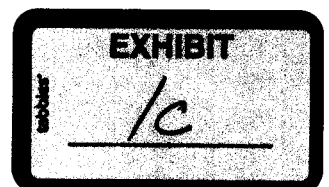
I do realize, however, that this authority, as you said, does not mean that you will pay the overtime wages. I would like to bring to your attention, however, that vacation pay contributions are also payable. And for that proposition you can look at Lipsumb v Foss Maritime Co., 83 F.3rd 1106 (9<sup>th</sup> Cir. 1996).

But, from your tone of voice, I don't expect you to do much of anything at this point but if you do we will be very grateful.

Very truly yours,

Dennis M. O'Bryan

DMO/mdw  
Attachment



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